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PRODUCTIONS, INC.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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	:	
MICHAEL GRECCO PRODUCTIONS, INC.,	:	No. 1:18-cv-2232
	:	
Plaintiff,	:	COMPLAINT FOR COPYRIGHT
	:	INFRINGEMENT
v.	:	
	:	
BUZZFEED, INC.,	:	
	:	
Defendant.	:	JURY TRIAL DEMANDED
	:	
-----	X	

Michael Grecco Productions, Inc. ("MGP"), for its complaint against BuzzFeed, Inc.,
alleges as follows:

INTRODUCTION

1. This is an action for copyright infringement involving the large-scale unauthorized use of photographic images by a major Internet media company well-known for everything from breaking news and investigative journalism, to quizzes, photo series, and listicles. For years, Defendant BuzzFeed, Inc. used plaintiff's copyrighted images, without license, to draw viewers to its pages, thereby increasing its native-advertising-based income.

2. Michael Grecco is a commercial photographer and film director noted for his iconic celebrity portraits, innovative magazine covers, editorial images and advertising spreads for high profile companies like Fox, NBC/Universal, GE, Pfizer, HBO, Kodak, IBM, Yahoo!, ESPN, Wired, Time, Entertainment Weekly, Esquire, Premier and MAXIM. His work is regularly featured in prestigious venues, including the Louis Stern, G. Ray Hawkins, Stephen Cohen and Fahey Klein galleries.

3. MGP owns Grecco's intellectual property. Grecco, operating through his company MGP, meticulously protects his intellectual property against infringement both within the United States and throughout the rest of the world. MGP's vigilance uncovered the large-scale infringements by BuzzFeed, and MGP now sues to put an end to it.

NATURE OF THE ACTION AND RELIEF SOUGHT

4. This is an action for copyright infringement and related claims brought against defendant for unauthorized and infringing uses of plaintiff's photographs.

5. Plaintiff seeks damages and other relief related to defendant's knowing and willful infringement of plaintiff's copyrights in the original works identified below.

PARTIES

6. MGP is a photography studio and agency that Grecco owns and operates. MGP owns the copyright to images created by Grecco and licenses those images to third parties on his behalf. MGP is a corporation organized and existing under the laws of the State of California with its principal place of business in Santa Monica, California.

7. MGP was formerly known as Michael Grecco Photography, Inc.

8. MGP licenses photographs for use and distribution throughout the United States, including New York, and the world.

9. On information and belief, defendant BuzzFeed, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York. According to its website, “BuzzFeed is the leading independent digital media company delivering news and entertainment to hundreds of millions of people around the world.”

JURISDICTION AND VENUE

10. This is an action for copyright infringement arising under the Copyright Act, 17 U.S.C. § 101 et seq.

11. The Court has subject-matter jurisdiction over plaintiff’s claims under 28 U.S.C. § 1331 and § 1338(a).

12. Defendant is subject to the personal jurisdiction of this Court because defendant has its principal place of business in New York, New York, in this judicial district.

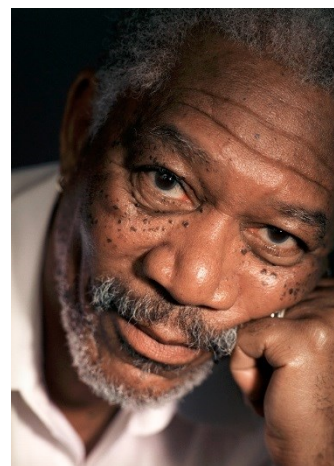
BACKGROUND FACTS

A. The Infringed Images

13. Grecco is the original author and creator of each of the following photographic images (collectively, the “Infringed Images”), the copyrights of which are owned and controlled by plaintiff MGP:

14. *Morgan Freeman Image*

- a. The Morgan Freeman Image is a photograph of award-winning actor, producer, and film narrator Morgan Freeman.
- b. The Morgan Freeman Image was registered with the United States Copyright Office as Registration VAu 630-623 (eff. May 28, 2017), in compliance with the Copyright Act.



15. *Gary Hart Image*



a. The Gary Hart Image is a photograph of American politician, diplomat, and lawyer Gary Hart, the former Colorado Senator and Presidential candidate.

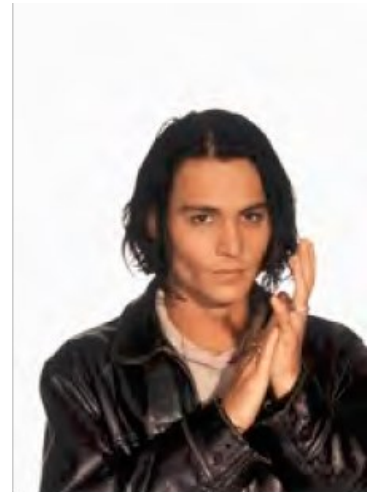
b. The Gary Hart Image was registered with the

United States Copyright Office as Registration VA 1-431-698 (eff. July 7, 2010), in compliance with the Copyright Act.

16. *Johnny Depp Image*

a. The Johnny Depp Image is a photograph of well-known American actor, producer, and musician Johnny Depp.

b. The Johnny Depp Image was registered with the United States Copyright Office as Registration VA 1-736-729 (eff. July 7, 2010), in compliance with the Copyright Act.



17. *Evan Spiegel Image*

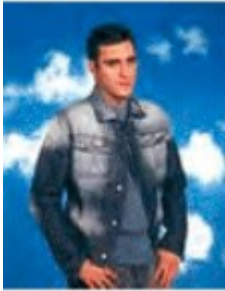


a. The Evan Spiegel Image is a photograph of American Internet entrepreneur Evan Spiegel, who is the co-founder and Chief Executive Officer of multinational technology and social-media company Snap Inc., which counts the Snapchat app among its product offerings.

b. The Evan Spiegel Image was registered with the United States Copyright Office as Registration VAu 1-161-074 (eff. December 22, 2013), in compliance with the Copyright Act.

18. *Joaquin Phoenix Images*

- a. The Joaquin Phoenix Images are photographs of well-known American actor, producer, music-video director, musician, and activist Joaquin Phoenix.



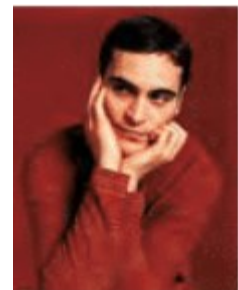
- b. Joaquin Phoenix Image 1, depicting the actor against a blue-sky background, was registered with the United States Copyright Office as Registration VAu 584-798 (eff. April 26, 2002), in compliance with the Copyright Act.

- c. Joaquin Phoenix Image 2, depicting the actor smiling against a blue-sky background, was also registered with the United States Copyright Office as Registration VAu 584-798.



- d. Joaquin Phoenix Image 3, depicting the actor in a yellow chair against a red background, was also registered with the United States Copyright Office as Registration VAu 584-798.

- e. Joaquin Phoenix Image 4, depicting the actor in a red shirt against a red background, was also registered with the United States Copyright Office as Registration VAu 584-798.



- f. Joaquin Phoenix Image 5, depicting the actor sitting in on a green bench in a green room, was also registered with the United States Copyright Office as Registration VAu 584-798.

- g. Joaquin Phoenix Image 6, depicting a head-shot of the actor against a red background, was also registered with the United States Copyright Office as Registration VAu 584-798.



19. *X-Files Images*

- a. The X-Files Images are promotional still photographs featuring actors Gillian Anderson and David Duchovny as agents Dana Scully and Fox Mulder from the popular television program “The X Files.”

- b. X-Files Image 1, depicting agents Scully and Mulder standing against a sky-blue background, was registered with the United States Copyright Office as Registration VA 2-030-741 (eff. January 23, 2017), in compliance with the Copyright Act.



- c. X-Files Image 2, depicting agents Mulder, holding a flashlight, and Scully against a grey cement background, was registered with the United States Copyright Office as Registration VA 1-232-596 (eff. April 8, 2003), in compliance with the Copyright Act.

- d. X-Files Image 3, depicting agents Scully and Mulder against a purple background, was registered with the United States Copyright Office as Registration VA 1-431-698 (eff. July 7, 2010), in compliance with the Copyright Act.



- e. X-Files Image 4, depicting agents Scully and Mulder against a hexagonal-patterned blue background, was registered with the United States Copyright Office as Registration VA 1-825-822 (eff. May 31, 2012), in compliance with the Copyright Act.



- f. X-Files Image 5, depicting agents Scully and Mulder standing against a brown background, was registered with the United States Copyright Office as Registration VA 2-063-319 (eff. July 27, 2017), in compliance with the Copyright Act.

20. Each of the Infringed Images is an original work of authorship fixed in a tangible medium of expression from which it can be perceived, reproduced, displayed, or otherwise communicated, either directly or with the aid of a machine or device.

21. Each of the Infringed Images is a separate and independent work of authorship in the form of a photographic image that comprises copyrightable subject matter protectable under the Copyright Act.

B. BuzzFeed's Unauthorized Uses

22. BuzzFeed owns and operates the website located and accessible at www.buzzfeed.com. According to some estimates, buzzfeed.com is ranked as the 66th most popular website in the United States, and the 190th most popular in the world, generating some 84.0 million unique visitors per month in the U.S. alone, and over 172 million unique monthly visitors globally.

23. BuzzFeed is a commercial endeavor, as its website features third-party advertisements by prominent business entities offering products and services, such as Intuit, Accenture, AstraZeneca, and others. On information and belief, the website also features articles that are sponsored or promoted by brands such as Quicken Loans, Skittles, Band-Aid, Toyota, Bank of America, Boost Mobile, and GEICO, as well as by movie studios.

24. On information and belief, all of BuzzFeed's revenue is ad-based, including native advertising placement and sponsored posts. Accordingly, BuzzFeed earns more income when the number of viewers who see its web pages increases. BuzzFeed has the incentive to draw more viewers to its website by featuring content that is visually interesting.

25. Plaintiff never licensed the Infringed Images to BuzzFeed. Instead, BuzzFeed has used, and continues to use, the Infringed Images on the buzzfeed.com website by prominently featuring the Infringed Images to promote articles and content and drive viewership.

26. BuzzFeed copied and displayed the Morgan Freeman Image at least once, in May 2013.

- a. The Morgan Freeman Image was featured in an article entitled *The 10 Most Annoyingly Ambiguous Facebook Status Updates...as Told by Morgan Freeman*, which was posted on the BuzzFeed Community page by an individual identified as "WhittyGolden, Community Contributor."
- b. On information and belief, BuzzFeed had the ability, and did in fact exercise the ability, to control the content appearing on the BuzzFeed Community page, including the *Morgan Freeman* article.

- c. On information and belief, the *Morgan Freeman* article was created by “WhittyGolden” and “suggested” to BuzzFeed’s editors, who then promoted the post to be featured on the BuzzFeed Community page.

27. BuzzFeed copied and displayed the Gary Hart Image at least once, in November 2013. The Gary Hart Image was featured in an article entitled *21 Ways To Be The Worst Politician In The World*, which was posted by Benny Johnson, who is identified as BuzzFeed Staff.

28. BuzzFeed copied and displayed the Johnny Depp Image at least once, in October 2013.

- a. The Johnny Depp Image was featured in an article entitled *The Official List of Hollywood Men Who Actually Look Hotter Clean Shaven*, which was posted on the BuzzFeed Community page by an individual identified as “stephanieg35, Community Contributor.”
- b. On information and belief, BuzzFeed had the ability, and did in fact exercise the ability, to control the content appearing on the BuzzFeed Community page, including the *Clean Shaven* article.
- c. On information and belief, the *Clean Shaven* article was created by “stephanieg35” and “suggested” to BuzzFeed’s editors, who then promoted the post to be featured on the BuzzFeed Community page.

29. BuzzFeed copied and displayed the Evan Spiegel Image at least twice, in June 2014. The Evan Spiegel Image was featured in an article entitled *16 Things All 29-Year-Olds Know To Be True*, which was published on buzzfeed.com in an English version and a Portuguese version. The article was posted by Leonora Epstein, identified as BuzzFeed Staff.

30. BuzzFeed copied and displayed all six of the Joaquin Phoenix Images at least once, in February 2013.

- a. The Joaquin Phoenix Images were featured in an article entitled *Joaquin Phoenix Thrives At Photoshoots*, which was posted on the BuzzFeed Community page by an individual identified as “emmadana, Community Contributor.”
- b. On information and belief, BuzzFeed had the ability, and did in fact exercise the ability, to control the content appearing on the BuzzFeed Community page, including the *Joaquin Phoenix* article.
- c. On information and belief, the *Joaquin Phoenix* article was created by “emmadana” and “suggested” to BuzzFeed’s editors, who then promoted the post to be featured on the BuzzFeed Community page.

31. BuzzFeed copied and displayed X-Files Image 1 at least four times, in April 2015, April 2016, and June 2016.

- a. X-Files Image 1 was featured in an article entitled *How Many of These Shows On Netflix Have You Seen?*, which was published in April 2015 on the BuzzFeed Community page by someone known as Ellie Bate, who is identified as a “Community Contributor.” On information and belief, BuzzFeed had the ability, and did in fact exercise the ability, to control the content appearing on the BuzzFeed Community page, including the *Netflix* article. On information and belief, the *Netflix* article was created by “Ellie Bate” and “suggested” to BuzzFeed’s editors, who then promoted the post to be featured on the BuzzFeed Community page.

- b. In April 2016, X-Files Image 1 was featured in an article entitled *13 Shows to Binge-Watch With The Ravenclaw In Your Life*, which was posted by Alanna Bennett, who is identified as BuzzFeed Staff.
 - c. X-Files Image 1 was featured in an article entitled *Which Hell Chat Member Are You?*,” which was published in January 2016 on the BuzzFeed Community page by someone known as “necctarines,” who is identified as a “Community Contributor.” On information and belief, BuzzFeed had the ability, and did in fact exercise the ability, to control the content appearing on the BuzzFeed Community page, including the *Hell Chat* article. On information and belief, the *Hell Chat* article was created by “necctarines” and “suggested” to BuzzFeed’s editors, who then promoted the post to be featured on the BuzzFeed Community page.
 - d. X-Files Image 1 was featured in an article entitled *17 títulos de series que Portugal transformou em alguma coisa dora*, which was published in November 2016. The author of the article was Juliana Katoaka, identified as “Equipe BuzzFeed [translation: Team BuzzFeed], Brasil.”
32. BuzzFeed copied and displayed X-Files Image 2 at least six times: in April, June, and July 2013; in September 2014; and in March and September 2015.
- a. X-Files Image 2 was featured in an article entitled *35 People You Probably Fancied In The ‘90s*, which was published to the BuzzFeed Community page in April 2013 by a Sam Parker, identified as a BuzzFeed Contributor. On information and belief, at the time of publication, Sam Parker was a features editor of BuzzFeed.

- b. In June 2013, X-Files Image 2 was featured in an article entitled *25 TV Shows You Have To Watch From The Beginning*, which was posted by Erin La Rosa, identified as BuzzFeed Staff.
- c. In July 2013, X-Files Image 2 was featured in an article entitled *17 Things That Need To Happen At Comic-Con This Year*, which was posted by Adam B. Vary, identified as BuzzFeed News Reporter.
- d. In September 2014, X-Files Image 2 was featured in an article entitled *Which Porn Parody Must You Absolutely Watch?*, which was posted by Norberto Briceño, identified as BuzzFeed Staff.
- e. In March 2015, X-Files Image 2 was featured in an article entitled “*‘The X-Files’ Is Coming Back To TV With Gillian Anderson And David Duchovny*,” which was posted by Emily Orley, identified as a BuzzFeed News Reporter.
- f. In August 2015, X-Files Image 2 was featured in an article entitled *Which Fall TV Show Should You Get Hooked On?*, which was posted by a user known as “Hulu, Brand Publisher.” On information and belief, the *Hooked On* article was a sponsored post by Hulu.

33. BuzzFeed copied and displayed X-Files Images 3 and 4 at least once, in July 2013.

- a. X-Files Images 3 and 4 were featured in an article entitled *Mulder and Scully Are Getting Hotter, FYI*, which was posted on the BuzzFeed Community page by someone known as “ChristmasElf” (and alternatively as “Robbie Crouch”), identified as a Community Contributor.”

- b. On information and belief, BuzzFeed had the ability, and did in fact exercise the ability, to control the content appearing on the BuzzFeed Community page, including the *Getting Hotter* article.
- c. On information and belief, the *Getting Hotter* article was created by “ChristmasElf” and “suggested” to BuzzFeed’s editors, who then promoted the post to be featured on the BuzzFeed Community page.

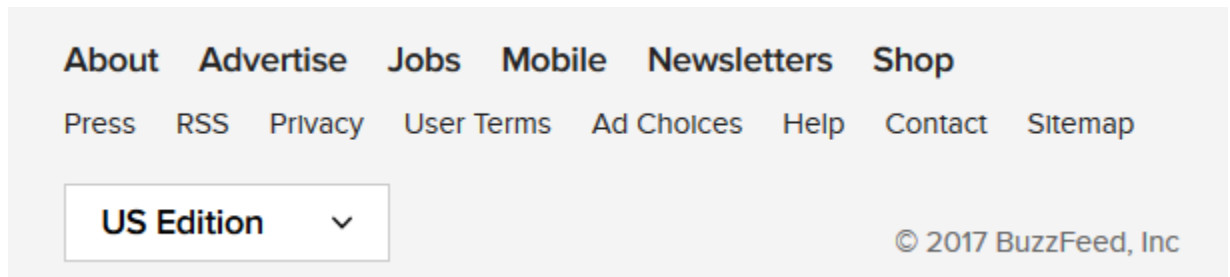
34. BuzzFeed copied and displayed X-File Image 5 at least once, in November 2014. X-Files Image 5 was featured in an article entitled *42 Utterly Perfect Gifts For The Binge-Watcher*. The article was posted by Mallory McInnis, identified as BuzzFeed Staff.

35. MGP notified BuzzFeed of some of these infringements in August 2017, yet as of the time this complaint was filed, BuzzFeed continued to display some of the images.

36. MGP discovered these infringements within the past three years, and/or the infringements have continued to occur during the past three years.

C. Facts That Support A Finding of Willful Infringement

37. BuzzFeed is aware of the importance of copyright protection. This is demonstrated on BuzzFeed’s website itself, which contains a copyright notice, © BuzzFeed, Inc., for example as shown below:



38. BuzzFeed's awareness of the important of copyright protection as it pertains to the rights of third parties is demonstrated by the following language that appeared on BuzzFeed's "Community" page at all relevant times:

Please remember to respect other creators' intellectual property rights; you may post only content that you have either created yourself or have gotten permission to run. And always make sure to provide proper credit to the creator. You can find some helpful resources here!

39. Despite this awareness, BuzzFeed acted with at least reckless disregard for, or willful blindness to, MGP's rights under the Copyright laws. On information and belief, BuzzFeed did not pay a license fee, inquire as to the availability of a license, do any work to confirm that the Infringed Images were authorized to be copied and displayed, or clear the Infringed Images for use on buzzfeed.com.

D. BuzzFeed's Control Over Third-Party-Generated Content

40. At all relevant times, BuzzFeed had the right to, and did in fact, control content posted by users on its "Community" page.

41. At all relevant times, BuzzFeed described the BuzzFeed Community as the "home for awesome posts created by BuzzFeeders who have successfully been promoted by our team of editors." According to BuzzFeed's Community "About" page, community members were encouraged to produce posts that they thought would do well on BuzzFeed and click "Suggest" to suggest the post to BuzzFeed's Community editors. BuzzFeed stated, "[i]f the post you suggest is good or fun or original or interesting ..., our editors will feature it on the Buzzfeed Community page."

42. BuzzFeed also encouraged users to create content for the Community page by offering rewards that gave users additional privileges. At all relevant times, the Community "About" page stated:

When you first sign up for BuzzFeed, you will have one opportunity to suggest a post each day. After your first post is accepted, your Cat Power will go from 0 to 1, and over time, as more of your posts are accepted, your CatPower will increase, giving you more opportunities to suggest posts.

43. On information and belief, BuzzFeed's Community editors would promote user content that was "good or fun or original or interesting" based in part on the visual appeal of the post, including any images that were included in the post.

44. BuzzFeed knew that content created by Community members could contain material that infringed intellectual property rights of others. At all relevant times, the "About" page also stated:

Please remember to respect other creators' intellectual property rights; you may post only content that you have either created yourself or have gotten permission to run.

45. Despite this knowledge, and despite monitoring, reviewing, and approving user-generated content for the Community page, BuzzFeed editors made no effort to verify or clear the images that were featured in the articles that they promoted to the Community page, including the Infringed Images.

COUNT I

Copyright Infringement

46. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of this Complaint as if fully set forth here.

47. The foregoing acts of BuzzFeed constitute infringement of plaintiff's copyrights in the Infringed Images in violation of 17 U.S.C. §§ 501 et seq.

48. Plaintiff has suffered damages as a result of defendant's unauthorized use of the Infringed Images.

49. On information and belief, BuzzFeed knew that the acts alleged above infringed plaintiff's copyrights, or it acted with reckless disregard for, or willful blindness to, plaintiff's rights under the Copyright laws. Accordingly, defendant's acts of copyright infringement, as alleged above, are willful, which further subjects defendant to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to \$150,000 per work infringed. Within the time permitted by law, plaintiff will make its election between actual damages and statutory damages.

COUNT TWO

Vicarious and/or Contributory Copyright Infringement

50. Plaintiff realleges and incorporates by reference the allegations contained in the preceding paragraphs of the Complaint as if fully set forth here.

51. Plaintiff is information and believes and on that basis alleges that defendant knowingly induced, participated in, aided and abetted in, and profited from the unauthorized reproduction and/or subsequent distribution of the Infringed Images.

52. Defendant is vicariously liable for the infringement alleged above because, on information and belief, they had the right and ability to supervise the infringing conduct, and did in fact exercise that right, and because they had a direct financial interest in the infringing conduct.

53. By reason of defendant's acts of contributory and vicarious infringement as alleged above, plaintiff has suffered and will continue to suffer substantial damages to its business

54. On information and belief, BuzzFeed knew that the acts alleged above infringed plaintiff's copyrights, or it acted with reckless disregard for, or willful blindness to, plaintiff's

rights under the Copyright laws. Accordingly, defendant's acts of copyright infringement, as alleged above, are willful, which further subjects defendant to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to \$150,000 per work infringed. Within the time permitted by law, plaintiff will make its election between actual damages and statutory damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff demands judgment against defendant as follows:

A. For a preliminary and permanent injunction against defendant and anyone working in concert with them from further copying, displaying, distributing, selling, or offering to sell plaintiff's photographs described in the Complaint;

B. For an order requiring defendants to account to plaintiff for their profits and any damages sustained by plaintiff arising from the acts of infringement;

C. As permitted under 17 U.S.C. § 503, for impoundment of all copies of the photographs used in violation of plaintiff's copyrights—including digital copies or any other means by which they could be used again by defendants without plaintiff's authorization—as well as all related records and documents.

E. For actual damages and all profits derived from the unauthorized use of plaintiff's photographs or, where applicable and at plaintiff's election, statutory damages.

F. For an award of pre-judgment interest as allowed by law;

G. For reasonable attorney fees.

H. For court costs, expert witness fees, and all other amounts authorized under law.

I. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues permitted by law.

Dated: March 13, 2018

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